HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.470/2020

Sri Manabendra Chowdhury

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

For Petitioner(s)	:	Mr. P. Roy Barman, Advocate, Mr. Samarjit Bhattacharjee, Advocate.
For Respondent(s)	:	Mr. Debalay Bhattacharjee, G.A.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

02/12/2020

The petitioner has challenged an order dated 03.07.2020 passed by the Government of Tripura by which his resignation from Government service (which he had withdrawn) has been accepted and his services stood terminated w.e.f. 14.04.2020.

2. Brief facts are as under:

The petitioner joined the post of Grade-II Police Officer in Tripura Police Service on 26.11.2007. At the relevant time, the petitioner was serving as an Assistant Commandant of 13th Bn. of Tripura State Rifles. On 10.04.2020 the petitioner wrote to the Principal Secretary, GA (P & T)

Secretariat, Government of Tripura seeking to resign from his service. The contents of the letter read as under:

> "Sub: Tendering of resignation from service.
>
> Sir,
>
> Kindly refer to the above
>
> I am a T.P.S Gr II Officer of 2007 batch & have competed more than 12 years of continuous & dedicated service in the most competent manner. But off late, I have been facing various issues pertaining to my personal life which are affecting my personal life. My wife is sick & needs continuous medical supervision & advice which I am unable to offer her as I am away from the remaining in Kanchanpur. My mother is old and remains sick almost regularly. I have been facing psychological issues for which I require medical counseling which is not possible by remaining in Kanchanpur.
>
> In view of above, I hereby would submit my resignation from service w.e.f. 14.04.20 which may kindly be accepted & oblige thereby."

3. On 15.04.2020 the petitioner withdrew the resignation by writing to the said authority as under:

> "Sub: Prayer for kind consideration for withdrawal of my resignation letter, dated, 10.04.20
>
> Sir,
>
> Kindly refer to the above
>
> I had submitted my voluntary resignation from service on 10.04.20. It was submitted in utmost haste & out of panic situation arising out of my personal & family

considerations. I am now posted on Asst. Comdt, 13th BN TSR at Kanchanpur. My ailing mother & wife solely depend upon me for their day to day care. My daughter is just 9 (nine) years old. I am the sole earning member of the family at this moment. On careful consideration & appreciation of facts, I concluded that I cannot afford to resign inadvertently & embrace future of extreme financial uncertainties especially when a lot depends on my shoulder. I am extremely apologetic of my sudden impromptu action & willfully request kind consideration for withdrawal of my letter dated 10.04.20.

I may kindly be given one opportunity at your behest & permitted to rejoin my duties at the earliest at this crucial juncture."

4. On 26.04.2020 the petitioner again wrote to the Government and reiterated his desire to withdraw the resignation. He highlighted that he has ailing mother, 9(nine) year old daughter and unwell wife. He, therefore, requires the salary to meet with his expenses. He again requested that he may be allowed to withdraw his resignation.

5. On 03.07.2020 the Government issued the impugned order which reads as under:

"In the interest of public service, the Governor is pleased to accept the resignation tendered by Shri

Manabendra Chaudhury, TPS Gr-II, Asstt. Comdt., TSR 13th Bn., Tripura with effect from 14-04-2020."

At this stage, petitioner filed this petition.

6. Respondents have filed a reply in which it is mainly contended as under:

"9. That, with regard to paragraphs-13, 16 & 20, I say that it is fact that before order dated 03.07.2020, the petitioner submitted application for withdrawal of his resignation. But, reasons for resignation submitted by the petitioner compelled the Government to accept his resignation as the petitioner himself in his application dated 10.04.2020 clearly mentioned that he needs constant counseling and periodical medication for psychological issues troubling him for last 1 (one) year. The petitioner holds a responsible position of Assistant Commandant in TSR Battalion. He is required to handle arms in case of operational situation. Therefore, being a psychological patient it was quite impossible for him to perform the job since he was not in a fit mental state to serve in Police Department where hasty and impulsive decision making can lead to loss of lives."

7. For multiple reasons, the stand taken by the Government is legally unsustainable. The record would suggest that the petitioner tendered his resignation on 10.04.2020 citing personal reasons. He requested that the resignation may be accepted w.e.f. 14.04.2020. This notice of resignation

itself was perhaps defective. It did not contain a mandatory period of one month or offer to surrender salary for such period. Whether the Government could have accepted such a defective notice and waived the requirement of notice is a separate issue. However, admittedly till 15.04.2020 when the petitioner realizing his error withdrew the resignation, the resignation of the petitioner was not accepted by the Government. The petitioner followed up his letter dated 15.04.2020 by a further letter dated 26.04.2020 in which he reiterated that he does not wish to resign from his service. Even after all this, the Government proceeded to accept the resignation of the petitioner by the impugned order dated 03.07.2020.

8. By now it is well settled that resignation tendered by a Government servant has to be accepted by the employer before it comes into effect. There cannot be unilateral termination of the relationship of employer-employee by the employee tendering resignation and walking out of service at will. In the present case, the acceptance of resignation took place only on 03.07.2020 long before which the petitioner had already withdrawn the resignation. It is equally well settled through series of judgments of Supreme Court that an employee who tenders resignation, has the right to withdraw the same before it comes into effect and surely before it is accepted. There are cases where a resignation tendered is accepted but

not yet become effective. Even in such cases, the Courts have recognized a reasonable right of the employee to explain his position and seek withdrawal of the resignation which the employer would ordinarily consider unless there are special circumstances to refuse such a request. It is not necessary to refer to long line of judgments on this issue. Reference to the decision in case of ***Balram Gupta vrs. Union of India and another*** reported in ***1987 (Supp) SCC 228*** would be sufficient. In the said case, the employee of Union of India had tendered resignation on 24.12.1980 intending that the same be effective on 31.03.1981. Before 31.03.1981 he withdrew the resignation which was not accepted. In such background, it was observed as under:

> "12. In this case the guidelines are that ordinarily permission should not be granted unless the Officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee

> available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in so quick succession that it cannot be said that any administrative set up or management was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this purpose the respondent is to blame and not the appellant."

9. The reasons cited by the Government for refusing to permit the petitioner to withdraw the resignation does not form part of the order. Even otherwise, these reasons cannot sustain the Government decision. If according to the Government the petitioner had exhibited a tendency which would make him unsuitable to be a senior police officer, there can hardly be a ground to pin down the petitioner to his resignation which was withdrawn in quick succession.

10. However, the petitioner cannot claim salary for the intervening period on the principle of no work no pay. Learned counsel for the petitioner also did not seriously press for such benefits.

11. In the result, petition is disposed of with following directions:

(i) Impugned order dated 03.07.2020 is set aside;

(ii) Resultantly, petitioner will be allowed to resume his duties latest by 15.12.2020 and he shall be deemed to be continued in

service for all purposes except the actual wages from the date of order till 15.12.2020. If the petitioner is not allowed to resume duty after such date, he shall be entitled to salary for the period after 15.12.2020.

12. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

Pulak

HIGH COURT OF TRIPURA
सत्यमेव जयते